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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MARSTELLER & ASSOCIATES P O BOX 803302 DALLAS, TX 75380-3302			EXAMINER KLEIN, GABRIEL J	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,190

Applicant(s)

BAR-YONA ET AL.

Examiner

GABRIEL J. KLEIN

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☒ Claim(s) 4, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Objections

Claim 4 is objected to because of the following informalities: Applicant claims that "the second color is the absence of color". This limitation is objected to since the absence of color is not a color, and thus this limitation does not make sense.

Claim 18 is objected to because of the following informalities: Applicant claims that "the colors are made of as material chosen...". This portion of the claim is grammatically incorrect.

Claims 19 is objected to because of the following informalities: Applicant claims that "the colors are made of Tritium". This portion of the claim does not make sense. A color cannot be *made of* an element. A more accurate limitation would be that the colors are produced by Tritium.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the shooter" in line 2. There is insufficient antecedent basis for this limitation in the claim. This term renders the claim indefinite and confusing since Applicant does not claim a firearm or a shooter. For purposes of

examination the term "shooter" will be considered by the examiner to refer to a "user" of the aiming device.

Claim 1 recites the limitation "the aim line" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim. Thus, the claim does not make clear what Applicant considers "the aim line" to be or whether Applicant is intending to claim a specific aim line. Further, this term ("the aim line") is repeated in at least claims 2 and 3.

The term "bright" in claim 5 is a relative term which renders the claim indefinite. The term "bright" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What one person considers to be a "bright color" might not be considered a "bright color" by another person.

Claim 8 recites the limitation "the center of the wall" in line 2. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim a wall of any type in claims 1 or 3, and thus it is unclear what wall Applicant is claiming.

Claim 8 recites the limitation "the peripheral area" in line 2. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim a peripheral area of any type in claims 1 or 3, and thus it is unclear what peripheral area Applicant is claiming.

Claim 9 recites the limitation "the focal point" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 12 and 13 recite the limitation "the cylindrical lens" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim a cylindrical lens in any of claims 1, 6, or 11. Thus, the claim is confusing. This limitation is found in at least claim 14 as well.

Claims 12 and 13 recite the limitation "the axis of the cylindrical lens" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim an axis of a cylindrical lens in any of claims 1, 6, or 11. Thus, the claim is considered indefinite since it is unclear which axis Applicant intends to claim (longitudinal, transverse, etc, etc). Further, claim 12 states that the fully reflective surface is plane and perpendicular to this axis. However, claim 12, which depends from claim 11 which depends from claim 6, contradicts claim 6 in that claim 6 requires that the retro reflective lenticular element comprises two opposite convex walls (one of which is fully reflective according to claim 11 in light of the specification and drawings).

Further, claim 13 is confusing and considered indefinite since Applicant claims that the fully reflective surface is convex. However, looking at Applicant's drawings and specification, there is only support for a concave or planar fully reflective surface. It should be appreciated that the fully reflective surface (as supported by the specification) is the inner surface of a convex lens, and thus the fully reflective surface itself is concave (not convex).

Claim 14 recites the limitation "the distal surface of the cylindrical lens" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim a distal surface of a cylindrical lens in any of claims 1, 6, or 11. Thus, the

claim is considered indefinite since it is unclear what surface Applicant intends to claim (What surface is the distal surface? Distal from what?). The claim is further confusing since Applicant claims that "the distal surface of the cylindrical lens comprises at least two fully reflective surfaces". How can a single surface comprise at least two surfaces? See claim 26 as well.

Claim 15 recites the limitation "the fully reflective surfaces" in line 1. There is insufficient antecedent basis for this limitation in the claim. Applicant does not claim multiple fully reflective surfaces in any of the previous claims (claims 1, 6, 11, or 13), and thus it is unclear what plurality of surfaces Applicant is claiming to be "so shaped as to indicate deviations in different directions".

Claim 16 recites the limitation "the existing sights" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "said gun" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the reflective surfaces" in line 1. There is insufficient antecedent basis for this limitation in the claim. Applicant does not positively claim any reflective surfaces.

Claim 20 recites the limitation "the original aiming sights" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 recites the limitation "the gun" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is unclear whether Applicant intends to positively claim a gun or not.

Claim 22 recites the limitation "its sheath" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is unclear whether Applicant intends to positively claim a sheath or not.

In reference to claim 24, it should be appreciated that the claim is replete with grammatical errors, terms lacking sufficient antecedent basis, as well as typographical errors. It is Applicant's responsibility to identify all instances of the above mentioned deficiencies and to make the appropriate corrections. Applicant should keep in mind that the axes claimed must be set forth such that they are unambiguous (a central axis could be longitudinal or transverse).

Claim 25 recites the limitation "the firearm" in line 1. There is insufficient antecedent basis for this limitation in the claim. Applicant does not previously positively recite a firearm, and thus it is unclear whether Applicant is intending to positively claim a firearm.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12, 16-18, 20, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Luebkehan et al (3362074; hereinafter Luebkehan).

In reference to claim 1, Luebkehan discloses an aiming device for firearms, comprising:

- a retro reflective lenticular component which is seen by a shooter as having at least one first color when an aim line has a desired orientation and having at least one second color when the aim line does not have said desired orientation (figures 1-16 and column 5, lines 36-54).

In reference to claim 2, Luebkehan discloses that the aim line has the desired orientation when it is parallel to the gun barrel axis (figures 1-5).

In reference to claim 3, Luebkehan discloses that the aim line has the desired orientation when it has a predetermined slant to the gun barrel axis (figure 19 and column 5, lines 55-62).

In reference to claim 4, Luebkehan discloses that the second color is the absence of color (figure 2, element 27 is disclosed as having only a minute spot of color in the center and that the peripheral area around the minute spot is uncolored).

In reference to claim 5, Luebkehan discloses that the first color is a bright color.

In reference to claim 6, Luebkehan discloses that the retro reflective lenticular element is a lens that comprises two opposite convex walls, one of said walls being capable of concentrating incoming parallel light beams upon the other wall (figure 5).

In reference to claim 7, Luebkehan discloses that said retro reflective element is a convex lens, comprising two opposite walls, one of said walls being tinted with at least two different colors (figures 2 and 18-19).

In reference to claim 8, Luebkehan discloses that one of the colors is located at a center of a wall, and the other color covers a peripheral area (figure 18).

In reference to claim 9, Luebkehan discloses that the retro reflective element comprises a convex lens and a parallel wall portion, located at the focal point of the lens (figure 2).

In reference to claim 10, Luebkehan discloses that the wall portion is tinted with at least two different colors (figure 18).

In reference to claim 11, Luebkehan discloses that the retro reflective element comprises at least one fully reflective surface (column 5, lines 36-40; opaque would be fully reflective).

In reference to claim 12, Luebkehan discloses that the fully reflective surface is plane and symmetric with respect to and perpendicular to the axis of the cylindrical lens (figure 5, element 50).

In reference to claim 16, Luebkehan discloses that the aiming device is an add-on element that further comprises means for attaching it to a firearm when desired, without concealing the existing sights of said firearm (figures).

In reference to claim 17, Luebkehan discloses that the reflective surfaces are only partially reflective (column 5, lines 36-40; translucent would be partially reflective)

In reference to claim 18, Luebkehan discloses that the colors are a fluorescent substance (column 5, line 15).

In reference to claim 20, Luebkehan discloses that the aiming device is used alternatively or complementary with the original sights of the firearm.

In reference to claim 25, Luebkehan discloses that the firearm is a gun that is intended to shoot a real projectile to a target.

Claims 1 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al (6604315).

In reference to claim 1, Smith et al disclose the claimed invention (column 14, lines 45-67, and column 15, lines 1-43).

In reference to claim 24, Smith et al disclose the claimed invention (column 14, lines 25-33 and 45-67; column 15, lines 1-43; and figure 19).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15, 19 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luebkehan.

In reference to claim 13, Luebkehan discloses the claimed invention except wherein the fully reflective surface is convex. However, the examiner takes Official Notice that it is known for the fully reflective surface of a retro reflective lenticular

element to be convex in order to place the focal point of the forward lens on the fully reflective surface no matter what angle the forward lens is viewed at. Thus, it would have been obvious to a person of ordinary skill in the art to modify the device of Luebkehan to have a convex fully reflective surface in lieu of a planar one.

In reference to claim 14, Luebkehan teaches that the fully reflective surface may comprise a central fully reflective surface of one color and a peripheral fully reflective surface of another color (set forth above). Luebkehan also teaches that the fully reflective surface may be convex (as set forth above). Thus, Luebkehan teaches that the convex fully reflective surface comprises at least two fully reflective surfaces (each having different colors).

In reference to claim 15, Luebkehan teaches that the fully reflective surfaces are so shaped as to indicate deviations in different directions.

In reference to claim 19, Luebkehan teaches the claimed invention except for wherein the colors are made of tritium. However, the examiner takes Official Notice that it is known to use tritium to produce colors in aiming devices. Thus, it would have been obvious to a person of ordinary skill in the art to use tritium has the colored substance used for the colored surfaces of the aiming device taught by Luebkehan.

In reference to claims 21 and 22, Luebkehan teaches the claimed invention except for wherein the colors are printed on an electroluminescent layer, illuminated electrically using a feeding battery. However, the examiner takes Official Notice that it is known to use an electroluminescent layer with colors printed thereon and powered by a battery in order to provide visual indicia for an aiming device. Thus, it would have

been obvious to a person of ordinary skill in the art to use an electroluminescent layer with colors printed thereon and powered by a battery as the means for coloring the reflective surface of the aiming device as taught by Luebkekan. Further, the examiner takes Official Notice that it is known to use a photoelectric switch to turn on/off a light source for an aiming device in order to conserve power. Thus, it would have been obvious to a person of ordinary skill in the art to use such a switch to turn on/off the electroluminescent layer, as taught by Luebkekan, only when light conditions make its use necessary.

In reference to claim 23, Luebkekan teaches that the aiming device is disposable.

In reference to claim 26, Luebkekan teaches that the fully reflective surfaces are so shaped as to indicate deviations in different directions.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Luebkekan (3346962), Fisher et al (5359800), Luebkekan (3028674), Giry et al (5675112), Young (4944572), Smith (3568346), Clay (3357770), and Gill (3237331).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GABRIEL J. KLEIN whose telephone number is (571)272-8229. The examiner can normally be reached on Monday through Friday 7:15 am to 3:45 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GJK

/J. Woodrow Eldred/

Primary Examiner, Art Unit 3641

